

(2009) 05 AHC CK 0625
In the Allahabad High Court

Raj Kumar Sharma

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0625

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K.Shukla, J.

Civil Misc. Writ Petition No. 24937 of 2009 has been filed by the petitioner questioning the validity of the order dated 24.03.2009 passed by District Inspector of Schools, Ghaziabad directing Raj Kumar Sharma to function as Officiating Principal and further holding that charges levelled are not so serious and directing the District Basic Education Officer to selection proceedings held for the post of Headmaster of the institution concerned.

Civil Misc. Writ Petition No. 25498 of 2009 has been filed by Raj Kumar Sharma for issuing writ in the nature of mandamus commanding the respondents to allow the petitioner to function as Officiating Principal at Sri Hoshiyar Singh Madyamic Vidyalay, Hoshiyarpur Garhi, Ghaziabad.

Brief background of the case is that in the district of Ghaziabad there has been Junior High School known as Sri Hoshiyar Singh Junior High School, Hoshiyarpur Garhi, Ghaziabad which was engaged for imparting education upto the Class 8. Said institution in question has been upgraded from Junior High School to High School and thereafter upto Intermediate Section. One Raj Kumar Sharma by virtue of being senior most teacher in the institution had been performing and discharging duties as adhoc Principal of the institution. Managing Committee of the institution proceeded to place the Raj Kumar Sharma under suspension. Said suspension has not been approved by the District Inspector of Schools. Writ Petitions have been filed before this Court being Civil Misc. Writ Petition No.

65395 of 2008 by the Management and Civil Misc. Writ petition No. 64885 of 2008 has been filed by Raj Kumar Sharma and this Court passed following order which is being quoted below:

"Civil Misc. Writ Petition No. 64885 of 2008 has been filed by the petitioner Raj Kumar Sharma for issuance of writ in the nature of mandamus commanding the respondent to allow the petitioner to function as Officiating Principal of Shri Hoshiyar Singh Inter College, Hoshiyar Garhi, District Ghaziabad.

Civil Misc. Writ Petition No. 65395 of 2008 has been filed by Managing Committee of the institution requesting therein that order dated 10.09.2008 be quashed.

This is undisputed position, that Managing Committee of the institution has passed resolution of suspension against Raj Kumar Sharma and transmitted the said papers to the District Inspector of Schools, Ghaziabad. Till date qua the said resolution passed for placing Raj Kumar under suspension no approval order has been accorded and thereafter District Inspector of Schools, Ghaziabad has proceeded to pass order directing therein that as period of sixty days has elapsed as such Raj Kumar Sharma is entitled to function as Principal of the Institution. Managing Committee of the institution on the basis of the disciplinary proceedings being initiated against Raj Kumar Sharma and on the basis of inquiry report dated 10.09.2008 has mentioned that charge has been proved, in this background resolved that Raj Kumar Sharma to be repatriated back and to function as teacher.

Sri Punit Kumar Gupta, learned counsel appearing on behalf of Raj Kumar Sharma contended with vehemence that such resolution could not have been passed, inasmuch as petitioner is senior most teacher functioning in the institution and has statutory right to function till the candidate comes from Board joins, in this background without there being any approval from the Board under Section 21 of U.P. Act No. V of 1982 such resolution could not have passed, and petitioner could not have been reverted back.

Sri R.K. Ojha, Advocate on the other hand contended that District Inspector of Schools, Ghaziabad is obliged in law to take decision on the validity of suspension and he cannot sit tight over the matter and then proceeded to say that period of sixty days have passed, as such incumbent should be permitted to function.

After respective arguments have been advanced, to this position Sri R.K. Ojha, Advocate conceded that such resolution reverting back the petitioner by way of punishment to the post of teacher could not have been passed by the Managing Committee of the institution without taking prior approval from the selection Board as envisaged under Section 21 of U.P. Act No. V of 1982. Once punishment has been inflicted on the strength of departmental proceedings upon the petitioner and no approval has been taken from the U.P. Secondary Education Services Selection Board, Allahabad and on the strength of same, petitioner has

been sought to repatriated back then resolution dated 14.09.2008 as communicated on 15.09.2008 is unsustainable and of no consequence till it is not accorded approval under Section 21 of U.P. Act No. V of 1982. However same will not prevent the Managing Committee of the institution to proceed in accordance with law by transmitting the same to U.P. Secondary Education Services Selection Board, Allahabad for the purpose according approval.

As far as action taken by District Inspector of Schools is concerned, it is true that after sixty days in case suspension has not been approved then it lapses but District Inspector of Schools in all eventuality is obliged to take decision on the resolution and said authority cannot be permitted to sit tight over the matter, as such District Inspector of Schools is directed to take decision on the resolution of the Committee of Management qua suspension preferably within next four weeks from the date of receipt of certified copy of this order, after affording opportunity of hearing to Raj Kumar Sharma, and Basant Lal Sharma both by means of reasoned and speaking order.

With the above direction and observation both the writ petitions are disposed of."

Thereafter impugned order dated 24.03.2009 has been passed.

With the consent of the parties both the writ petitions have been taken up and are being finally decided on the pleadings available in both the writ petition.

Learned counsel for the petitioner Sri Nitin Gupta, contended with vehemence that in the present case District Inspector of Schools has transgressed and over stepped its jurisdiction by passing impugned order as such writ petition No. 24937 of 2009 deserves to be allowed.

Countering said submission Sri Punit Kumar Gupta, Advocate on the other hand contended that till date there is no order of approval of the order of suspension passed by Managing Committee of the Institution passed by District Inspector of Schools and there is no order passed under Section 21 of U.P. Act No. V of 1982, by U.P. Secondary Education Services Selection Board, as such rightful directives have been issued and Raj Kumar Sharma is fully entitled to function as Principal and receive his salary till orders are not passed by U.P. Secondary Education Services Selection Board, Allahabad.

After respective arguments have been advanced, factual position which is emerging in the present case is that Raj Kumar Sharma has been placed under suspension and said suspension has not at all been approved by the District Inspector of Schools till date. Net effect of the same is that once suspension order has not been approved then said suspension has become inoperative by operation of the law after expiry of period of sixty days. Raj Kumar Sharma had been performing and discharging duties as ad hoc Principal of the institution by virtue of being senior most teacher. Against him various serious charges has been levelled by the Committee of Management of the institution and thereafter inquiry has been conducted and concluded and papers has been transmitted to

District Inspector of Schools for the purposes of according approval to the said resolution wherein he has been sought to be reverted back as Assistant Teacher. Said resolution passed by the Committee of Management is of no consequence unless and until it is accorded approval by the U.P. Secondary Education Services Selection Board, Allahabad under Section 21 of U.P. Act No. V of 1982. After enforcement of U.P. Act No. V of 1982, District Inspector of Schools has no authority to accord approval qua the proposal of punishment even in respect of ad hoc Principal and said decision has to be taken by the U.P. Secondary Education Services Selection Board, Allahabad as has been held in the case of Committee of Management L.P. Inter College Kanpur and another Versus State of U.P. and others (Civil Misc. Writ Petition No. 14860 of 2007 decided on 15.06.2007. In the present case order impugned reflects that District Inspector of Schools has gone into the merit of the charges and has brushed aside the said charges whereas after enforcement of U.P. Act No. V of 1982 the District Inspector of Schools has no such authority. District Inspector of Schools in this background has clearly erred by rejecting the charges by describing that said charges are nonserious. Said part of the order passed by District Inspector of Schools cannot be subscribed and even said part of the order cannot be subscribed wherein District Inspector of Schools has given directives for filling up the post of Headmaster of Junior High School. Once institution in question has been upgraded from Junior High School to Intermediate then institution in question is governed by the provision as contained under U.P. Act No. II of 1921 and District Basic Education Officer will have no role to play in the matter of selection and appointment of Headmaster of High School or Principal of Intermediate college. This part of the impugned order dated 24.03.2009 passed by District Inspector of Schools is thus unsustainable. In this background impugned order dated 24.03.2009 passed by District Inspector of Schools to the extent it directs quashing of the charges and directs for undertaking steps for appointment on the post of Principal through the agency of District Basic Education Officer same are hereby quashed and set aside and remaining part of the directives given by District Inspector of Schools to the extent of functioning Raj Kumar Sharma as Principal and to receive salary same is hereby upheld and further directives are given to District Inspector of Schools to transmit entire papers of disciplinary proceedings to U.P. Secondary Education Services Selection Board, Allahabad within three weeks from the date of presentation of certified copy of the order and U.P. Secondary Education Services Selection Board, Allahabad after receiving entire papers shall proceed to take appropriate decision in accordance with law preferably within next three months from the date of receipt of the papers after providing opportunity of hearing to both Manager or his nominee, and Principal or his nominee.

With the above observations Civil Misc. Writ Petition No. 24937 of 2009 is partly allowed and Civil Misc. Writ Petition No. 25498 of 2009 is disposed of.

No order as to cost.